



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 9, 1995

Mr. Lou Bright  
General Counsel  
Texas Alcoholic Beverage Commission  
P.O. Box 13127  
Austin, Texas 78711-3127

OR95-258

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31015.

The Texas Alcoholic Beverage Commission ("TABC") has received a request for information about five companies' seller training programs. Section 106.14 of the Alcoholic Beverage Code authorizes the TABC to approve such seller training programs. Presumably the companies submitted the requested information to the TABC in order to obtain approval of their respective programs. *See* Alco. Bev. Code § 106.14(b). You assert that this information is excepted from required public disclosure under sections 552.104 and 552.110 of the Government Code. One of the companies asserts that the information is confidential under section 552.101 of the Government Code in conjunction with section 5.48 of the Alcoholic Beverage Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 5.48 of the Alcoholic Beverage Code provides as follows:

(a) "Private records," as used in this section, means all records of a permittee, licensee, or other person other than the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license, or in a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permittee or licensee.

(b) The private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise, are privileged unless introduced in evidence in a hearing before the commission or before a court in this state of the United States.

The term "privileged" in this statute has been construed to mean "confidential" for purposes of the Open Records Act. See Attorney General Opinion JM-1235 (1990) at 2; Open Records Decision Nos. 186 (1978), 62 (1974).

Because the meaning of the term "private records" is not entirely clear from the face of subsection (a), we examine the statutory predecessor to section 5.48. Section 5.48 is a nonsubstantive codification of a provision of the Texas Liquor Control Act, formerly codified as subsection (5) of article 666-12a, Vernon's Annotated Penal Code (1925), see Alco. Bev. Code § 1.01(a), which provided in pertinent part as follows:

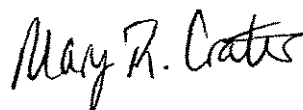
Records of all violations of this Act by holders of licenses and permits and records introduced and made public at hearings, and decisions resulting therefrom relating to such violations shall be kept on file at the office of the Liquor Control Board at Austin, Texas, and such records shall be open to the public. *The private records of any person, permittee or licensee (which shall be any records except the name, proposed location, and type of permit or license sought in any application for a permit or license or any renewal thereof, any periodic report covering the importation, distribution, or sale of any alcoholic beverages required by the Board to be regularly filed by a permittee or licensee) which are required or obtained by the Liquor Control Board or its agents in connection with any investigation, or otherwise, shall be privileged, unless introduced in evidence in a hearing before the Board or any court of this state or the United States.*

Liquor Control Act, 61st Leg., R.S., ch. 38, § 1, 1969 Tex. Gen. Laws 80, 81 (emphasis added). This provision was broadly written. We believe it is clear from this language that former subsection (5), now section 5.48, makes confidential any records required or obtained by the TABC, with the exception of "the name, proposed location, and type of permit or license sought in any application for a permit or license or any renewal thereof" and "any periodic report covering the importation, distribution, or sale of any alcoholic beverages required by the Board to be regularly filed by a permittee or licensee." The requested information falls into neither exception. Thus, we see no reason why the information obtained by the TABC in connection with seller training program applications would not be made confidential under this provision.

For the reasons stated above, we conclude that the requested information is confidential under section 552.101 of the Government Code in conjunction with section 5.48 of the Alcoholic Beverage Code<sup>1</sup> and must not be released with one exception. The Southland Corporation has stated that it does not object to the release of its program materials. The TABC must release this information.<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Open Government Section

MRC/KHG/rho

Ref.: ID# 31015

Enclosures: Submitted documents

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<sup>1</sup>Therefore, we need not reach the applicability of sections 552.104 and 552.110 of the Government Code.

<sup>2</sup>Obviously, The Southland Company does not contend that this information is confidential under section 552.110. The TABC has not demonstrated that this information is excepted from required public disclosure under section 552.104.

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